

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
)
Plaintiff)
)
v.)
)
NATIONAL RAILROAD PASSENGER CORPORATION,)
)
Defendant.)

CONSENT DECREE

WHEREAS, the plaintiff, United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint (the "Complaint") alleging that the defendant, National Railroad Passenger Corporation ("Amtrak") has violated Sections 301, 307, 308, and 311 of the Clean Water Act (the "Act"), 33 U.S.C. §§ 1311, 1317, 1318, and 1321; and

WHEREAS, Defendant, Amtrak, a corporation organized and existing under the laws of the District of Columbia, owns and operates a national passenger rail system and operates commuter rail systems. Included in Amtrak's operations are facilities at the following locations: Boston Engine Terminal (now Commuter Rail Maintenance Facility), 70 Rear Third Avenue, Somerville, Massachusetts; Commuter Rail Service & Inspection Facility, 110 Widett Circle, Boston, Massachusetts; Southampton Street Maintenance Facility, 2 Frontage Road , Boston, Massachusetts; New Haven Motor Storage Facility, 54 Hallock Avenue, New Haven, Connecticut; Bradford Layover Facility, Railroad Avenue, Bradford, Massachusetts; Ipswich Layover Facility, Hayward Street,

Ipswich, Massachusetts; Needham Layover Facility, West Street, Needham, Massachusetts; Providence Maintenance of Way Facility, 309 Royal Little Drive, Providence, Rhode Island; and North Station, Causeway Street, Boston, Massachusetts (individually a "facility" and collectively the "New England Facilities"); and

WHEREAS, Amtrak discharges wastewater, including stormwater, from the New England Facilities into waters of the United States and from several of the New England Facilities into Publicly Owned Treatment Works ("POTW").

WHEREAS, the complaint alleges that, in violation of Sections 301, 307, 308, and 311 of the Act, 33 U.S.C. §§ 1311, 1317, 1318, and 1321, Amtrak has violated its National Pollutant Discharge Elimination System ("NPDES") permits, discharged storm water without a NPDES permit, violated the Storm Water Multi-Sector General Permit for Industrial Activities, failed to prepare, review, and amend its Spill Prevention Control and Countermeasure ("SPCC") Plans, violated requirements imposed by the Narragansett Bay Commission's pretreatment program, and discharged oil into Fort Point Channel.

WHEREAS, Amtrak does not admit any of the allegations of the complaint and denies any liability therefor;

WHEREAS, the parties agree, without adjudication or admission of facts or law, that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the dispute, and the parties consent to the entry of this Consent Decree;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. STATEMENT OF CLAIM

1. The Complaint filed in this action states claims upon which relief can be granted against the defendant pursuant to Sections 309 and 311 of the Act, 33 U.S.C. §§ 1319 and 1321.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the subject matter of this action and over the parties to this Consent Decree pursuant to Sections 309(b) and 311(b)(7)(E) of the Act, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1331, 1345 and 1355. Venue properly lies in this district pursuant to Section 309(b) and 311(b)(7)(E) of the Act, 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395.

III. APPLICABILITY

3. The provisions of this Consent Decree shall apply to and be binding upon the United States on behalf of the EPA, and upon Amtrak and its officers, directors, agents, employees acting in their official capacities, successors, and assigns. Amtrak shall give notice and a true copy of this Consent Decree to all persons, firms, and corporations acting in active concert or participation with Amtrak related to the performance of this Consent Decree. Amtrak shall also give notice and a true copy of this Consent Decree to all successors in interest prior to any transfer of ownership or other interest in all or part of the facility or its operations. Simultaneously with such notice, Amtrak shall notify, in writing, EPA Region I and the United States Attorney for the District of Massachusetts, at the addresses specified in Section XV of this Consent Decree, of such succession in interest and that such notice and copy has been given by Amtrak. Except as provided below, in the event of transfer of ownership or other interest in any or all of any facility or its operations, Amtrak shall not be released

from the obligations or liability under this Consent Decree unless the new owner has specifically assumed, and has the financial and technical ability to assume, the said obligations and liability for compliance with these provisions. Provided, however, that the obligations and liability set forth in the preceding sentence shall not apply to the requirements in Section VIII at a facility where Amtrak was the contract operator of a facility or operation and said contract is terminated.

IV. OBJECTIVES

4. It is the express purpose of the parties in entering into this Consent Decree to further the goals of the Act, as enunciated at Sections 101 and 311(b)(1) of the Act, 33 U.S.C. §§ 1251 and 1321(b)(1). Any and all provisions herein relating to operation and maintenance, monitoring, reporting, and inspections shall have the objective of ensuring full compliance with the Act, the regulations promulgated pursuant to the Act, and the terms of the NPDES permits issued to the defendant.

V. CIVIL PENALTY AND ENVIRONMENTAL PROJECTS

5. Amtrak shall pay a civil penalty and complete Supplemental Environmental Projects as described below which, along with the other provisions of this Consent Decree, will satisfy the United States' civil claims alleged in the Complaint through the date of lodging of this Consent Decree.

a. Civil Penalty

Amtrak shall pay a civil penalty of five hundred thousand dollars (\$500,000), of which \$50,000 shall be allocated to the violations of Section 311 of the Act and \$450,000 shall be allocated to the balance of the Clean Water Act violations. Amtrak shall make payment by electronic funds transfer, in accordance with written instructions to be provided by the United States Attorney's Office,

Financial Litigation Unit, Boston, Massachusetts. Amtrak shall make payment by FedWire Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, referencing USAO File Number 2000V00069, EPA Region I, and DOJ Case Number 90-5-1-1-06798. The United States Attorney's Office will advise its online accounting office to initiate the appropriate Online Payment and Collection (OPAC) transaction to the United States Coast Guard National Pollution Funds Center. The costs of such electronic funds transfer shall be the responsibility of Amtrak. A copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and any transmittal letter shall be sent to the United States and EPA at the addresses specified in Section XV, and to the United States Coast Guard, National Pollution Funds Center, 4200 Wilson Blvd., Suite 1000, Arlington, VA 22203. Payment of the civil penalty shall be made within thirty (30) days after Amtrak receives notice of entry of the Consent Decree. If Amtrak fails to tender payment within thirty (30) days of receiving notice of entry of this Consent Decree, then interest shall accrue on the debt to the United States, from the date of entry of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961. The penalty specified in this Paragraph shall represent civil penalties and shall not be deductible for purposes of Federal taxes.

b. Supplemental Environmental Projects

(1) Amtrak shall complete and operate the Supplemental Environmental Projects specifically described in Attachment A (the "SEPs") in accordance with the Scope of Work contained in Attachment A. The SEPs are (a) a Culvert Improvements for Wetland Restoration Project ("Culvert Project") to be conducted at various locations along the Connecticut shore which is intended to benefit tidal wetlands by reducing tidal restrictions which impede flow, and (b) a Retrofill of Locomotive PCB

Transformers Project ("Transformer Project") which involves retrofitting a number of locomotive transformers with the goal to reduce the total mass loading of PCB's that could be potentially leaked or spilled into the environment and, if feasible, to reclassify them to non-PCB units, thereby reducing the risk of PCB spills or fire events involving PCBs. Attachment A is specifically incorporated herein by reference.

(2) Amtrak shall complete the SEPs according to the schedules set forth in Attachment A.

(3) The total expenditure for the SEPs shall be \$900,000. In order to complete the projects in accordance with the specifications set forth in the Scope of Work, the anticipated expenditure for the Culvert Project is approximately \$400,000 and for the Transformer Project is approximately \$500,000. To the extent that actual expenditures for either project differ from these estimated expenditures, Amtrak commits to spending a combined total of \$900,000. All project modifications and additions are subject to EPA's written approval. Amtrak shall include documentation of the expenditures made in connection with the SEPs as part of the SEP Completion Report.

(4) Amtrak hereby certifies that the SEPs are not required under any other state, local or federal law or regulation and that the SEPs are not to be implemented as a consequence of another agreement to which Amtrak is a party. Amtrak also certifies that it has not negotiated, is not presently negotiating, and will not in the future negotiate to initiate or complete the SEPs in response to any other local, state or federal enforcement action or in order to receive a grant from any entity.

(5) Amtrak agrees that EPA may inspect the sites of the SEPs at any reasonable time in order to confirm that the SEPs are operating properly and in conformity with the representations

made herein. In consideration of the location of the Culvert Project SEP sites within active railroad operations territory, EPA agrees that it will give Amtrak at least five (5) business days notice prior to the date EPA wishes to make said inspections. Amtrak will make its best efforts to provide adequate railroad protective services for EPA inspectors to visit the site(s) upon the requested date. EPA will not attempt to visit or inspect the sites without adequate railroad protective services.

(6) Amtrak hereby agrees that any written public statement or oral statement made on behalf of the company, making reference to any of the SEPs, shall include the following language:

"This Project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency in which the Agency alleged violations of the Clean Water Act."

(7) This Consent Decree shall not relieve Amtrak of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology used or installed by Amtrak in connection with the SEPs undertaken pursuant to this Consent Decree.

(8) Amtrak hereby agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes. In addition, for each tax year that costs are incurred by Amtrak for the SEP, Amtrak's chief financial officer (or other official responsible for tax preparation) shall, within thirty (30) days of the date it submits its Federal tax returns for any tax year in which SEP costs are incurred, submit a signed statement to EPA certifying that the expenses were not so deducted. The certification shall state:

"Under the pains and penalties of perjury, I declare that I have examined Amtrak's tax return pertaining to the year XXXX . To the best of my knowledge and belief, these tax returns do not contain deductions or depreciation for any supplemental environmental project expenses my company has incurred, nor has Amtrak received a tax credit from either the federal or state government for any of those expenses."

In addition, Amtrak shall submit documentation satisfactory to EPA (which may include, without limitation and in addition to the requirements of Paragraph 13, employee time sheets, accountant worksheets, and copies of relevant portions of the corporate tax return) demonstrating that such expenses were not deducted.

VI. COMPLIANCE

6. Within thirty (30) days of the entry of this Consent Decree, Amtrak shall:
 - a. file Notices of Intent to be covered by the Multi-Sector Permit and develop SWPPPs for the Bradford Layover Facility ("Bradford") and the Needham Layover Facility ("Needham").
 - b. achieve and, thereafter, maintain compliance with Amtrak's obligations under the NPDES Storm Water Multi-Sector General Permit for Industrial Activities which appears at 65 Fed. Reg. 64801 (October 30, 2000) ("Multi-Sector Permit") and the Storm Water Pollution Prevention Plans ("SWPPP") developed for the Commuter Service and Inspection Facility ("CSI"), the Commuter Rail Maintenance Facility ("CRMF"), the Southhampton Street Maintenance Facility ("Southhampton"), Bradford, and Needham.

c. achieve and, thereafter, maintain compliance with Rhode Island Permit Discharge Elimination System ("RIPDES") Permit No. RIR800293 and the March, 2000 SWPPP for the Providence Maintenance of Way Facility ("Providence").

d. achieve and, thereafter, maintain compliance with National Permit Discharge Elimination System ("NPDES") General Stormwater Industrial Permit No. GSI000951 and the September, 2000 SWPPP for the New Haven Facility ("New Haven").

e. fully implement Amtrak's obligations under the Spill Prevention Control and Countermeasure ("SPCC") Plans for CRMF, CSI, Southhampton, Providence, and New Haven.

f. complete a review and evaluation of the SPCC Plans for CSI, Southhampton, and New Haven by December 16, 2000, for Providence by July 14, 2001, and for CRMF by July 21, 2001. If required pursuant to 40 CFR § 112.5(b), Amtrak shall amend its SPCC plans.

VII. COMPLIANCE AND SEP REPORTING

7. Amtrak shall submit to the Water Technical Unit, EPA, Region I, at the address in Section XV below, within forty-five (45) days of completion of the respective reports or documents, copies of the following documents or reports performed pursuant to each of the New England Facilities' SWPPP and/or the requirements of the Multi-Sector Permit:

- a. Copies of the most recent SWPPPs for the New England Facilities;
- b. Copies of the next three quarterly inspection reports, including the results of all monitoring and visual examinations conducted during such quarter, for the following New England Facilities following lodging of this Consent Decree:

CSI, CRMF, Southhampton, Bradford, Needham, Providence and New Haven; and

- c. Copies of the next Comprehensive Site Evaluation performed pursuant to a SWPPP for each of the New England Facilities following lodging of this Consent Decree.

8. Amtrak shall submit to the Water Technical Unit, EPA Region I, at the address in Section XV below, within forty-five (45) days of completion, a monthly compilation of all inspection reports performed pursuant to each of the New England Facility's SPCC plan for three months following lodging of this Consent Decree.

9. EPA will review the reports submitted in accordance with Paragraphs 7 and 8 and will, with written notice to Amtrak, identify any deficiencies in the reports or in implementation of the SWPPPs or SPCC plans. Amtrak shall make appropriate revisions to correct deficiencies within 60 days of receipt of notice of deficiencies. If the deficiencies are not cured, Amtrak will be subject to stipulated penalties pursuant to Section X.

10. Paragraph 6 shall terminate upon full implementation of Amtrak's obligations under Paragraph 6 and upon completion of its reporting requirements specified in Paragraphs 7, 8, and 9 of this Consent Decree. Termination of Amtrak's obligations under Paragraph 6 will have no effect on Amtrak's obligation to comply with all applicable statutory and regulatory requirements.

11. Amtrak shall submit any interim reports required by Attachment A to EPA in accordance with the schedule and requirements recited therein.

12. Amtrak shall submit the Vegetation Study Reports for the Culvert Project described in Attachment A in accordance with the schedule therein. These reports shall contain all of the vegetation monitoring data detailed in Attachment A. These reports shall describe any changes in vegetation in the tidal wetlands upstream of the culvert work on each project as specified in Attachment A.

13. Amtrak shall mail a SEP Completion Report for each SEP project to EPA within sixty (60) days following the completion of the respective SEP. In the case of the Culvert Project, Amtrak shall submit two SEP Completion Reports: (a) a SEP Construction Phase Completion Report after completion of the culvert improvements and the salinity study and (b) a Final SEP Completion Report as part of the last Vegetation Study Report. The SEP Completion Reports shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any implementation problems encountered and the solutions thereto;
- c. Itemized costs; in itemizing its costs, Amtrak shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the

individual costs of the goods and/or services for which payment is being made.

For costs incurred in-house, those costs shall be Amtrak's actual costs as determined in accordance with Amtrak's standard cost accounting principles;

- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree, except that with respect to the Culvert Project, the certification for the SEP Construction Phase Completion Report shall address implementation of the work covered by that Report and the certification for the Final SEP Completion Report shall address the remaining work on the Project;
- e. For the Culvert Project, a summary of the salinity data shall be included in the Construction Phase Completion Report and copies of all interim reports since the date of submission of the Construction Phase Completion Report shall be included in the Final SEP Completion Report;
- f. For the Transformer Project, a description of the environmental benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

14. After receipt of each SEP Completion Report described in the preceding Paragraph, EPA will, in writing, either (i) indicate that EPA concludes that the SEP (or the portion of the SEP completed to date, in the case of the Culvert Project) has been completed satisfactorily; (ii) determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Section X herein; or (iii) notify Amtrak of any deficiencies in the SEP Completion Report or the SEP and specify a reasonable schedule for curing such deficiencies. If EPA notifies Amtrak pursuant to

clause (iii) above that the SEP Completion Report is deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself, Amtrak shall, within 30 days of receipt of such notice, cure any deficiencies in the SEP Completion Report. If EPA notifies Amtrak pursuant to clause (iii) above of deficiencies in the performance of a SEP, Amtrak shall cure the deficiencies in accordance with the schedule specified by EPA, unless within ten (10) days of its receipt of the EPA notification, Amtrak submits a written notice of dispute to EPA pursuant to Section XII (Dispute Resolution). A determination by EPA that a SEP has not been completed satisfactorily under clause (ii) above shall be final unless within ten (10) days of its receipt of the EPA notice Amtrak submits a written notice of dispute to EPA pursuant to Section XII (Dispute Resolution). For purposes of this Paragraph, a SEP shall be considered “satisfactorily” completed if performed in accordance with Attachment A and the applicable provisions of the Consent Decree. With respect to the Culvert Project, satisfactory completion of the Construction Phase shall mean that all requirements in Attachment A through the Construction Phase, including collection of salinity data, have been performed; satisfactory completion of the remaining actions in the Culvert Project shall mean that all other requirements of Attachment A have been performed.

15. Failure to submit any report required by Paragraphs 11 through 13 or cure any deficiencies in accordance with Paragraph 14 above shall be deemed a violation of this Consent Decree and Amtrak shall become liable for stipulated penalties pursuant to Section X below.

16. The aforementioned reporting requirements do not relieve Amtrak of its obligation to submit any other reports or information required by the Act, or by the regulations

promulgated thereunder including, but not limited to, the reporting requirements set forth in the Multi-Sector Permit, or by any applicable state or local requirements.

17. Any information provided under the reporting requirements of this Consent Decree may be used by the United States as an admission of Amtrak in any proceeding to enforce the provisions of this Consent Decree or the Act.

18. Once EPA determines in accordance with Paragraph 14 that Amtrak has satisfactorily completed a SEP (in the case of the Culvert Project, the Construction phase and Final phase of the Project) Amtrak's obligations under Paragraphs 5 b.(1) through (3) and Paragraphs 11 through 14 of this Decree shall terminate as to such SEP.

VIII. NATIONAL ENVIRONMENTAL COMPLIANCE AUDIT

19. Amtrak shall conduct a multi-media environmental compliance audit (National Audit) at the facilities listed in and according to the Schedule in Attachment B ("Audit Facilities") in accordance with the provisions of this Section.

20. The primary objectives of the National Audit shall be 1) to assess Amtrak's compliance with the statutes and regulations listed in Paragraph 21 and the environmental permits described in Paragraph 23, at each facility at the time of the audit, and 2) to identify at each facility all violations of such statutes, regulations and permits committed in the past 12 months. In addition, the information gathered during the National Audit shall be used for the Environmental Management System Review and Evaluation to be conducted in accordance with Attachment C of this Consent Decree. Implementation of the National Audit shall be consistent with Amtrak's Environmental Management System developed in consultation with PricewaterhouseCoopers ("PwC"), Attachment C of the

Consent Decree, and the primary objectives listed above and shall be conducted according to the audit protocols developed by Amtrak.

21. The multi-media environmental compliance audits shall assess Amtrak's compliance at each facility at the time of the audit with the following laws and all regulations corresponding thereto (collectively the Listed Statutes and Regulations), and identify at each facility all violations committed in the past twelve months of such laws and regulations:

- a. Clean Water Act, 33 U.S.C. § 1251 et seq.;
- b. Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.;
- c. Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.;
- d. Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.;
- e. Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., insofar as it relates to PCBs and asbestos management;
- f. Clean Air Act, 42 U.S.C. § 7401 et seq.;
- g. Part C (UIC Program) of the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., (Amtrak has an existing SDWA audit program with respect to potable water supplies pursuant to EPA's Water Supply Guidance 34, "Plan for EPA Implementation of the Safe Drinking Water Act on Interstate Conveyance"); and
- h. Applicable state and local environmental laws relating to clean water, clean air, and toxic substances.

22. The audits shall be conducted at all of Amtrak's Major Mechanical Facilities, Medium Mechanical Facilities, Maintenance of Way Facilities/Signal Shops, and MBTA Commuter Layover Facilities listed in Attachment B (Audit Facilities).

23. The audits shall include, but not be limited to, an evaluation of each facility's (a) operating procedures and practices, (b) process and non-process wastewater pollutants, storm water pollutants, process and non-process wastewater and storm water treatment, and process and non-process wastewater and storm water discharges, (c) oil storage capacity and storage methods, (d)

oil spill prevention control and countermeasure plans, (e) air pollutant emissions, emissions controls, and maintenance practices for any such controls and compliance with pre-construction requirements, (f) solid and hazardous waste generation, handling, storage and disposal, (g) management of asbestos, PCB, and lead based paint, and (h) monitoring, record keeping and reporting procedures, as these various activities relate to Amtrak's compliance with the Listed Statutes and Regulations, and with Amtrak's compliance with the terms and conditions of any permits issued under any of the listed statutes and regulations (collectively, the Environmental Permits).

A. Audit Team and Protocols

24. Not later than thirty (30) days after the lodging of the Consent Decree, Amtrak shall submit in writing the audit protocols to EPA for review and comment. Such protocols shall, at a minimum, include a detailed checklist for each individual statutory, regulatory, or permit requirement and a description of the work necessary to complete the auditing program.

25. The audit team members shall meet the following criteria:

a. In order to ensure the objectivity of the audit process and its findings and any conclusions, the members of the audit team should be independent of the activities they audit. They should be objective and free from bias and conflict of interest throughout the process. An audit-team member chosen from within the organization should not be accountable to those directly responsible for the subject matter being audited,

b. In order for Amtrak to develop its audit protocols and formal corrective action process, Amtrak's environmental auditors shall be familiar with the following at each of the Audit Facilities:

- (a) general facility layouts, operations, and operating capacities;
- (b) the facility's oil capacities, oil storage and spill prevention control and countermeasure plans
- (c) water pollutant discharge sources and controls, including procedures and practices for handling and treating process wastewater and facility storm water;
- (d) effluent monitoring, recordkeeping and reporting procedures and practices;
- (e) air pollutant emission sources and controls, including control operation and maintenance procedures and practices;
- (f) air emission monitoring, recordkeeping and reporting procedures and practices;
- (g) solid and hazardous waste generation, handling and disposal procedures and practices;
- (h) solid and hazardous waste monitoring, recordkeeping and reporting procedures and practices;
- (i) procedures and practices for complying with EPCRA reporting requirements; and
- (j) any current or pending environmental permits, notices of violation, compliance orders, notices of abatement and Consent Decrees.

26. EPA shall review Amtrak's proposed audit protocols. If EPA comments on the proposed audit protocols, Amtrak shall incorporate EPA's comments and submit revised protocols within sixty (60) days after receiving EPA's comments.

B. Work Plan

27. Within thirty (30) days of Amtrak's submittal of any final audit protocols, pursuant to the preceding Paragraph, Amtrak shall submit a proposed audit work plan ("Work Plan") to EPA. The proposed Work Plan shall incorporate or include the audit protocols and the Audit Manual which

includes procedures and specific tasks for the audits, but shall not restrict Amtrak from conducting such additional inquiries as may be necessary to accomplish the purposes of the audits.

28. The proposed Work Plan shall also include the schedule for conducting and completing the audits, a schedule for the completion of all tasks set forth in the Work Plan including reporting audit results, and plans for achieving compliance. The Work Plan shall also include the names and resumes of those employees (the Audit Team(s)) who will be primarily responsible for performance of the tasks set forth in the Work Plan. The schedule for conducting the audits shall require that audits for all Major Mechanical Facilities shall be completed no later than twelve (12) months following the date of entry of this Consent Decree, and that the audits for Medium Mechanical Facilities, Maintenance of Way Facilities/Signal Shop Facilities and MBTA Commuter Layover Facilities be completed no later than thirty-six (36) months following the date of entry of this Consent Decree, provided that any audits conducted after September 30, 2000 and prior to entry of the Consent Decree shall be deemed as having been conducted pursuant to this schedule. Provided further, if, following the conduct of any facility audits, Amtrak revises any audit protocol in response to EPA comments, Amtrak shall proceed as follows: (a) for any Major Mechanical Facility, the revised audit protocol shall be used by Amtrak at the next scheduled audit of that facility, and (b) for all other Audit Facilities, Amtrak shall arrange within a reasonable time to conduct a follow-up audit of said facility limited only to the issues which were the subject of the revision to the audit protocol.

29. EPA shall review the Work Plan and, with written notice to Amtrak, accept it or identify the deficiencies. If EPA comments on the Work Plan, Amtrak shall incorporate EPA's comments and submit a revised Work Plan to EPA within thirty (30) days after receiving EPA's

comments. EPA's acceptance or rejection of the Work Plan is within its sole discretion and is not reviewable in court.

C. Audit Performance

30. Within thirty (30) days after EPA accepts the Work Plan, the Audit Team shall commence any audits not already conducted, and thereafter shall perform the audits in accordance with the Schedule in Attachment B.

31. The Audit Team shall focus on determining Amtrak's compliance with the Listed Statutes and Regulations or Environmental Permits as of the date of the audit. The Audit Team shall also conduct a review of Amtrak's records to determine Amtrak's compliance status during the previous twelve months.

32. The Audit Team shall perform at least one on-site inspection of each Audit Facility, and EPA may accompany the Audit Team during its inspection(s) and shall have access to all units, areas, equipment, and structures at the Audit Facility during the inspection(s) and at all other times.

33. The Audit Team shall follow the Work Plan at each Audit Facility and shall require the facility to perform appropriate testing, sampling or other procedures as needed to determine Amtrak's present compliance with the Listed Statutes and Regulations or with Environmental Permits.

34. If in the course of performing the audit, the Audit Team discovers a condition at an Audit Facility that, in the Audit Team's independent judgment, constitutes an imminent threat to human health or the environment, the Audit Team shall immediately notify EPA of the condition. Amtrak shall immediately address and ameliorate the condition and immediately consult with EPA as to how best to eliminate it.

D. Audit Report

35. Amtrak shall develop an Audit Report for each environmental compliance audit conducted at an Audit Facility, as required by this Consent Decree, within thirty (30) days following the completion of the on-site portion of the audit at that Audit Facility. Each Audit Report shall present the audit findings. Amtrak shall submit to EPA within ten (10) days of completing the Audit Report for each Audit Facility, a summary of the audit findings ("Audit Findings Summary") including a preliminary plan for expeditiously bringing the Audit Facility into full compliance with respect to the identified current violations and to mitigate or address the identified environmental harm to the extent obligated by federally-enforceable environmental requirements. The Audit Findings Summary shall include all of the information necessary to demonstrate satisfaction with EPA's policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," (revised effective May 11, 2000) ("Audit Policy"). If Amtrak believes that any identified potential noncompliance in the Audit Report does not constitute actual noncompliance, Amtrak shall, as part of the written notice required in this Paragraph, provide to EPA a detailed explanation of Amtrak's views. Where violations are identified as a result of an Audit, Amtrak shall provide a copy of the Audit Findings Summary to the appropriate EPA Region within the time period specified by this Paragraph.

36. Amtrak agrees to provide to EPA the full audit report, within 20 days of request, and not to attempt to use any federal or state audit and/or privilege laws that would in any way restrict EPA's ability to obtain, review or use the audit report in any federal compliance or enforcement action. Except as needed in a federal enforcement action, the United States will not disclose an audit report submitted pursuant to this Decree to any person outside of EPA or the U. S. Department of Justice

unless required pursuant to applicable law. If required to disclose such audit report, EPA shall give Amtrak prior notice of its intent to disclose such report.

37. The Audit Report shall describe in detail the results of the audits, including, but not limited to, the following:

- (a) The procedures followed during the audit, including any deviation from the approved Work Plan;
- (b) The audit scope, including the period of time covered by the audit and each statute against which environmental compliance was determined;
- (c) The date(s) the on-site portion of the audit for each Audit Facility was conducted;
- (d) Identification of audit team members for each Audit Facility;
- (e) The violations of all Listed Statutes, Regulations and Environmental Permits committed in the past twelve months;
- (f) Amtrak's current compliance obligations at its Audit Facilities with regard to the Listed Statutes and Regulations and any Environmental Permits;
- (g) Amtrak's current compliance status at its Audit Facilities with regard to the Listed Statutes and Regulations and any Environmental Permits, including any potential noncompliance with these statutes, regulations or permits (including but not limited to any air or water pollutant emissions or discharges in excess of statutory, regulatory or environmental permit limits or requirements, or any improper handling or disposal of any solid or hazardous waste);
- (h) recommendations, including completion dates, for potential improvements or modifications to Amtrak's environmental compliance program or operating procedures and practices at its Audit Facilities to ensure compliance with all listed statutes and regulations and any environmental permits, including but not limited to specific recommendations regarding Amtrak's wastewater treatment system(s), its storm water management plan(s), and its oil spill prevention control and countermeasure plans;
- (i) any other information that in the judgment of the Audit Team merits review by EPA or Amtrak, and;

(j) Certification by Amtrak that the referenced compliance audits were conducted in accordance with the Work Plan.

E. Action Plan

38. Within forty-five (45) days of completing the Audit Report, Amtrak shall develop and submit to EPA for review and comment an Action Plan for expeditiously bringing the Audit Facility into full compliance with respect to the identified current violations and to mitigate or address the identified environmental harm to the extent obligated by the Listed Statutes, Regulations, and Environmental Permits. The Action Plan shall be consistent with the time frames for corrective action in Condition D5 of the Audit Policy, shall include specific deliverables, responsibility assignments, and a compliance schedule, and shall be consistent with any applicable Listed Statutes, Regulations, and Environmental Permits. The Action Plan may be accompanied by supporting information and a justification. This Action Plan may be submitted separately or as part of the Audit Findings Summary.

39. In the case of a violation at a Facility which Amtrak does not own but operates under contract, where necessary corrective action requires either (a) improvements or modifications to the Facility, its fixtures or equipment, which, under the applicable contract, are the responsibility of the owner or lessor, or (b) action by a third party over which Amtrak has no authority or control (e.g., a contractor retained by the property owner to operate a wastewater treatment system), the Action Plan shall provide for Amtrak to (i) make a written request to the owner or lessor within fifteen (15) days of Amtrak's discovery of the violation notifying the owner or lessor of the violation and the recommended action to cure it and thereafter make good faith efforts to reach agreement with the owner or lessor on a schedule for implementing a corrective action plan, and (ii) if practicable, cease any activity of Amtrak

(and persons under its control) which is the subject of the violation. An Action Plan which meets the requirements of this Paragraph shall be deemed a satisfactory Action Plan under this Consent Decree with respect to such violation. If Amtrak invokes clause (b) above and asserts in good faith that the applicable contract assigns responsibility for the action to a third party over which Amtrak has no authority or control, and if EPA disagrees, EPA will not seek stipulated penalties or enforcement of this Consent Decree with respect to such violations if the Action Plan otherwise meets the requirements of this Paragraph. EPA may exercise its unreviewable discretion under the Audit Policy to determine that the Action Plan does not meet Condition D.5 of the Audit Policy. In any event, the United States retains and reserves all authority and rights under applicable statutory or regulatory law to take any and all actions to address any such violation, and Amtrak reserves all of its defenses.

40. EPA shall review the Action Plan and, with written notice to Amtrak, accept it or identify the deficiencies, and explain why the proposed corrective steps set forth therein will not correct the noncompliance, adequately correct, mitigate or address the environmental harm to the extent obligated by Listed Statutes, Regulations, or Environmental Permits. If not accepted, Amtrak shall revise and resubmit the Action Plan within thirty (30) days following receipt of the written notice identifying and explaining the deficiencies. The resubmitted document shall address each identified deficiency. With written notice to Amtrak, EPA shall accept the resubmitted document or identify the deficiencies and explain each deficiency as provided above. Should EPA not accept the resubmission, Amtrak shall have ten (10) days from receipt of the notice of deficiencies to cure the deficiencies that are identified. If EPA concurs that the deficiencies have been cured, EPA shall accept the final submission and notify Amtrak in writing of same. If EPA has not commented within 6 months following

submission, an Action Plan shall be deemed accepted. If EPA determines that not all deficiencies have been cured, it may elect to exercise its rights with respect to all Audit Findings as provided in Paragraph 43, or it may accept the Action Plan with respect to those Audit Findings for which there are no outstanding deficiencies, and address the matters for which there are outstanding deficiencies under Paragraph 43. Amtrak shall proceed to implement the accepted Action Plan.

41. Nothing contained in this Section shall prevent Amtrak from taking corrective steps before acceptance of the Action Plan to correct violations or adequately correct, mitigate or address environmental harm identified during an audit site visit or as audit findings. If requested by Amtrak, EPA shall use best efforts to review and comment on the appropriateness of such corrective steps before Amtrak takes them.

42. Amtrak must certify to EPA in writing that it has completed all corrective steps set forth in an Action Plan within 30 days of completion of all corrective steps.

43. If any disagreement arises between Amtrak and EPA regarding one or more of the Audit Findings, or the appropriateness of all or a portion of the proposed Action Plan, that cannot be resolved in a reasonable time period, the United States retains all authority and reserves all rights to take any and all actions authorized by law to address some or all of the Audit Findings, and Amtrak reserves all of its defenses.

F. Civil Penalties Resulting from Audit Findings.

44. For violations discovered at Audit Facilities not specifically the subject of the Complaint, this Consent Decree and the inspections and investigations leading to it will not preclude EPA from exercising its discretion to find that such violations are deemed to meet any provisions of the Audit Policy. In addition, violations described in the preceding sentence and discovered and disclosed pursuant to an audit, or other due diligence resulting from an audit, conducted (i) during the effective term of this Decree, (ii) pursuant to this Decree, and (iii) in accordance with the Work Plan, will be deemed to meet certain provisions of the Audit Policy, as follows:

- a. Such disclosures shall be deemed to meet Condition D.1 of the Audit Policy.
- b. An audit leading to such disclosures shall be deemed to be a component of agreement to terms to implement a comprehensive environmental management system, for purposes of Condition D.2 of the Audit Policy.
- c. Disclosures made in accordance with the Audit Report requirements of Section VIII D of this Decree shall be deemed to have met the prompt disclosure requirements of Condition D.3 of the Audit Policy.
- d. For the purposes of Conditions D.4.b and D.7 of the Audit Policy, the violations alleged in the Complaint will not be considered part of a multiple pattern of violations that would preclude the availability of the Audit Policy for later discovered and disclosed violations at other facilities, if Amtrak used reasonable efforts to identify, disclose and correct the violations alleged in the Complaint at its other facilities.
- e. Condition D.7 of the Audit Policy will be deemed satisfied with respect to a violation which is the same as or related to one found during a previous audit at a different facility if, following the earlier audit, Amtrak used reasonable efforts to identify, disclose and correct such violations at its other facilities.

45. If EPA deems a penalty appropriate for a violation discovered through an Audit after receipt of an Audit Findings Summary pursuant to an Audit, EPA may present, in writing, a civil penalty demand for the violations so identified.

46. If Amtrak disagrees with the amount of EPA's demand for civil penalties, the parties shall meet to discuss the appropriateness of the penalty under the applicable policies. If Amtrak agrees with the amount of EPA's demand, as originally presented or as modified by EPA, Amtrak and EPA shall memorialize such agreement in a manner they deem appropriate, and Amtrak shall pay the agreed-upon civil penalty. Payment of the civil penalty and performance of the agreed-upon Corrective Steps shall resolve any civil liability of Amtrak with regard to matters identified through the National Audit and the Action Plan with regard to such Facility, unless EPA and Amtrak agree to leave certain items unresolved by the agreement.

47. If any disagreement between Amtrak and EPA regarding the appropriateness of the civil penalty demand cannot be mutually resolved in a reasonable time period, the United States and EPA retain all authority and reserve all rights to take any and all actions authorized by law to address the Audit Findings, and Amtrak reserves its defenses.

48. In the event the Parties cannot reach agreement regarding the appropriateness of a penalty, any penalty mitigation proposal shall not be binding upon the United States or EPA should either exercise enforcement rights outside the scope of this Consent Decree to address the Audit Findings, nor shall it be binding on Amtrak.

49. Amtrak's obligations under Section VIII of this Consent Decree shall be deemed fulfilled once Amtrak has completed its Facility Audits in accordance with the schedule in Attachment B, submitted all Facility Action Plans and certified completion of all corrective steps pursuant to Paragraph 42.

IX. ENVIRONMENTAL MANAGEMENT SYSTEM

50. Amtrak shall continue to implement its Environmental Management System (EMS), described in Attachment C. Attachment C is hereby incorporated by reference into this Consent Decree. Amtrak shall submit status reports regarding the implementation of the EMS to EPA on September 1, 2001 and, thereafter, every six months until implementation is complete.

51. The primary objective of the EMS shall be to improve Amtrak's compliance with applicable environmental requirements, and lead to improved environmental performance. In addition, the EMS shall promote employee and public awareness, education, and involvement in the environmental aspects of Amtrak's operations.

52. By July 31, 2001, Amtrak shall complete the preparation of a corporate-wide "Environmental Management System Manual" which shall document and set forth procedures for all of Amtrak's EMS programs in accordance with the provisions of Attachment C. Amtrak shall submit the complete Environmental Management System Manual to EPA within thirty (30) days of its completion. Amtrak shall continue to implement the EMS according to the schedule contained in Attachment C and the EMS Manual.

53. By May 1, 2002, Amtrak shall provide to EPA in writing (1) the name, affiliation, and address of the independent third party consultant selected by Amtrak to perform a Comprehensive EMS Review and Evaluation of Amtrak's EMS; (2) an explanation of how the selected independent third party consultant satisfies the independence and proficiency criteria in ISO 14010, Section 4.2 (1996(E)) and ISO 14012, Sections 1 – 11 (1996 (E)) of the AINSI/ISO 14000 Series, Environmental Management Systems and Environmental Auditing, and (3) a schedule, including

milestones, for conducting the review. The review shall be performed in accordance with the ISO 14010 (1996 (E)) of the AINSI/ISO 14000 Series, Environmental Management Systems and Environmental Auditing. Amtrak's contract with the third party consultant shall require such third party consultant to review and evaluate the implementation of the systems, policies, and procedures described in the EMS Manual, using the standard EMS elements set forth in the EMS (Attachment C) as criteria for the evaluation.

54. Within ninety (90) days after submitting the notification required by Paragraph 53 above, the independent third party consultant shall complete the Comprehensive EMS Review and Evaluation and submit a Comprehensive EMS Review and Evaluation Report to Amtrak and EPA, simultaneously. This report shall include (1) the results of the consultant's review and evaluation of the EMS relating to Amtrak's operations and (2) the consultant's recommendations for improvements to the EMS.

55. Within thirty (30) days after receipt of the independent third party consultant Comprehensive EMS Review and Evaluation Report, Amtrak shall provide to EPA a written response to the recommendations presented in that Report identifying those recommendations it does and does not intend to implement and/or plans to implement with modification(s). Amtrak shall include in its response an explanation of its rationale for not implementing and/or modifying the independent third party consultant recommendations and a schedule for implementing changes to the EMS based on the Comprehensive EMS Review and Evaluation.

56. EPA will provide any comments on the Comprehensive EMS Review and Evaluation Report within ninety (90) days of EPA's receipt of such Report unless EPA notifies Amtrak in writing

that additional time for review and comment is required. EPA's review and comment will not extend beyond one hundred and fifty (150) days of EPA's receipt of the Comprehensive EMS Review and Evaluation Report.

57. Amtrak shall, within thirty (30) days of receipt of EPA's comments on the Comprehensive EMS Review and Evaluation Report, submit to EPA a written response to such comments.

58. Amtrak shall certify completion of all actions required in Attachment C, other than the Comprehensive EMS Review and Evaluation Report, within thirty (30) days of completion of all such actions.

59. Amtrak's obligations under Section IX of this Consent Decree shall be deemed fulfilled once Amtrak has certified completion of all of the actions required in Attachment C, submitted its Comprehensive EMS Review and Evaluation Report, its response to the recommendations and its response to any EPA comments on the Report.

X. STIPULATED PENALTIES

60. Amtrak shall pay stipulated penalties to the United States for violations of this Consent Decree, as set forth below:

a. For failure to submit the Civil Penalty pursuant to the terms of Paragraph 5.a, Amtrak shall pay stipulated penalties in the following amounts for each day during which the payment is not received:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 30th day	\$1,000
31st and beyond	\$2,000

b. Five hundred dollars (\$500) per violation per day for each day by which Amtrak is late in mailing any notification, report, or correction required by Paragraphs 7, 8, or 9.

c. One thousand five hundred dollars (\$1500) for each day that Amtrak fails to comply with any of the requirements set forth in Paragraph 6.

d. Except as provided in Paragraph 60. e. below, for failure to complete any work required of Amtrak under the National Audit provisions or the EMS provisions in accordance with the terms and schedules set forth in this Consent Decree and Attachments B and C, Amtrak shall pay stipulated penalties in the following amounts for each day during which each violation continues:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1 st through 30 th day	\$500
31 st through 60 th day	\$1000
61 st day and beyond	\$2000

e. In the event Amtrak is late in mailing any audit protocol, Work Plan, Audit Report, Audit Findings Summary, Action Plan, or certification pursuant to Section VIII, or is late in mailing any EMS Progress Reports required pursuant to Section IX of this Decree, Amtrak shall pay stipulated penalties in the following amounts for each day such document is late:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
5th through 30 th day	\$250

31 st through 60 th day	\$500
61 st day and beyond	\$1000

f. In the event that Amtrak fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraph 5.b. above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 5.b. above, Amtrak shall be liable for stipulated penalties according to the provisions set forth below:

- i. If Amtrak's total expenditures for the completed SEPs are less than nine hundred thousand dollars (\$900,000), Amtrak shall pay a stipulated penalty equal to one dollar for each one dollar of difference between the actual cost of the SEPs and nine hundred thousand dollars (\$900,000) plus interest accruing from the date of entry of this decree at the rate provided for in 28 U.S.C. § 1961. Any penalty payments made by Amtrak pursuant to subparagraph ii below shall be deducted from the penalty due under this Paragraph.
- ii. Independent of subparagraph f.i. above, in the event that any of the SEPs are not completed or maintained in accordance with Paragraph 5b and Attachment A, Amtrak shall pay a stipulated penalty equal to one dollar for each dollar of projected SEP costs for the part of the SEP not completed or maintained, subject to dispute resolution as provided in subparagraph vii. below and in Paragraph 14 above. When evaluating whether to reduce the amount of stipulated penalty due, EPA may take into account the extent to which a SEP

has been completed and is operating as contemplated herein and Amtrak's expenditures for the SEP. Amtrak shall pay any such additional penalty according to the procedures in Paragraph 61 within 30 days of demand.

- iii. Notwithstanding subparagraph f. ii above, if the SEP is not completed in accordance with Paragraph 5.b. but the EPA determines that Amtrak: a) made good faith and timely efforts to complete the SEP; and b) certifies, with supporting documentation, that at least 100 percent of the amount of money which was required to be spent was expended on the SEP, Amtrak shall not be liable for any stipulated penalty.
- iv. Amtrak shall pay a stipulated penalty of \$500 for each day that it is late in completing any of the SEPs described in Attachment A. In addition, if Amtrak is more than 6 months late in completing any of the SEPs described in Attachment A, the payment provisions contained in subparagraph 60.f.ii for SEPs that are not completed shall apply.
- v. For failure to submit any SEP Completion Report required by Paragraph 13 or for failure to cure deficiencies as required by Paragraph 14 above, Amtrak shall pay a stipulated penalty in the amount of \$1000 for each day that Amtrak is late in submitting the report or curing the deficiencies.
- vi. For failure to submit any other report required by Paragraphs 11 or 12 above, Amtrak shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due until the report is submitted.

vii. The determination of whether a SEP has been satisfactorily completed shall be subject to dispute resolution as provided in Section XII.

viii. The determination of whether Amtrak has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

g. Nothing in this Consent Decree shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Amtrak's violation of this Consent Decree or of the statutes and regulations upon which this Consent Decree is based, or for Amtrak's violation of any applicable provision of law, and Amtrak reserves all rights and defenses with respect thereto.

61. Stipulated penalty payments to the United States as specified in Paragraph 60 shall be made, without demand, in accordance with this paragraph. Payments of less than fifty thousand dollars (\$50,000) shall be made to the United States by certified check, payable to "Treasurer of the United States of America," and shall be tendered to the United States Attorney for the District of Massachusetts, together with a transmittal letter describing the basis for the penalties and referencing USAO File Number 2000V00069 and DOJ Case Number 90-5-1-1-06798. A copy of the transmittal letter shall be sent to the United States and EPA at the addresses specified in Section XV. Payments of fifty thousand dollars or more shall be made by FedWire Electronic Funds Transfer ("EFT") referencing USAO File Number 2000V00069, EPA Region I, and DOJ Case Number 90-5-1-1-06798. The EFT shall be made in accordance with current EFT procedures and in accordance with written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit, Boston, Massachusetts. The costs of such electronic funds transfer shall be the responsibility of

Amtrak. Amtrak shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and a transmittal letter explaining the basis of the penalties to the United States and EPA at the addresses specified in Section XV. Except as provided otherwise herein, all stipulated penalties begin to accrue on the day after performance is due or on the day a violation occurs, and continue to accrue through the final day of all corrections of the noncompliance. Payments shall be made by the fifteenth (15th) day of the month following the calendar month in which performance is due or any violations occur, except, however, that payments of stipulated penalties which are the subject of dispute resolution pursuant to Section XII shall be made by the fifteenth (15th) day of the month following the conclusion of such dispute resolution. In the event that a stipulated penalty payment is not made on time, without demand, such penalty shall be subject to interest at the statutory judgment rate set forth at 28 U.S.C. § 1961, for each day of late payment or non-payment. Nothing in this Paragraph shall be construed to limit the United States in seeking any remedy otherwise provided by law for failure to pay any stipulated penalties. Whether or not a stipulated penalty is due shall be the subject of dispute resolution. Amtrak shall notify EPA within ten (10) days after a respective compliance deadline or notice by EPA, whichever is earlier, of its position and shall request dispute resolution. Thereafter the provisions of Section XII (Dispute Resolution) shall apply.

62. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XI. FORCE MAJEURE

63. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Amtrak, including its consultants, contractors and subcontractors and any other entities controlled by Amtrak, that delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding Amtrak's best efforts to avoid the delay. Stipulated penalties shall not be due for the number of days of noncompliance caused by a Force Majeure event as defined in this Paragraph, provided that Amtrak complies with the terms of this Section XI. Examples of events which may constitute force majeure events include natural disasters, national emergencies, work stoppages and delays in obtaining any required approvals or permits despite Amtrak's complete and timely submission of requests for approval and applications for required permits and any supplemental information that may be requested. Examples of events that are not force majeure events include, normal inclement weather, unanticipated or increased costs or expenses of work, the financial difficulty of Amtrak to perform such work, acts or omissions attributable to Amtrak's contractors or representatives, and the failure of Amtrak or Amtrak's contractors or representatives to make complete and timely application of any required approval or permit.

64. If any event occurs which may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Amtrak shall notify EPA orally or via fax within forty-eight (48) hours after Amtrak first knew or should have known that the event might cause a delay. Within five (5) working days thereafter, Amtrak shall provide to the United States, at the addresses specified in Section XV, a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by Amtrak to prevent or minimize the delay, a proposed schedule for the implementation of such

measures, and a statement as to whether, in the opinion of Amtrak, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Notwithstanding the foregoing, Amtrak shall notify EPA orally or via fax within two hours of becoming aware of any event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA within twenty-four (24) hours. Failure to give timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

65. If EPA agrees that a delay or anticipated delay is attributable to Force Majeure, the parties shall stipulate in writing to an extension of time for the performance of the affected requirements of this Consent Decree, not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances. Stipulated penalties shall not be due for the number of days of noncompliance caused by such circumstances.

66. If the parties are unable to agree whether Amtrak's failure to comply with a provision of this Consent Decree is attributable to Force Majeure, or on the number of days of noncompliance that were caused by a Force Majeure event, the matter shall be subject to Dispute Resolution. Amtrak shall notify EPA of its request to invoke dispute resolution within ten (10) days of receipt of written notice from EPA that it disagrees with Amtrak's position either (a) that a delay is attributable to Force Majeure, or (b) as to the number of days of non compliance caused by Force Majeure. Thereafter, the provisions of Section XII (Dispute Resolution) shall apply. If the Court then determines that the failure to comply was caused by circumstances beyond the control of Amtrak and any entity controlled by Amtrak, including Amtrak's consultants, contractors and subcontractors, and it is determined that

Amtrak or any entity controlled by Amtrak could not have foreseen and prevented such noncompliance, Amtrak shall be excused as to the failure to comply for the period of time the noncompliance continued due to such circumstances.

67. In any such determination to be made by the Court pursuant to Paragraph 66, Amtrak shall bear the burden of proving (1) that the noncompliance was caused by circumstances beyond the control of Amtrak and any entity controlled by Amtrak, including its consultants, contractors and subcontractors; (2) that Amtrak or any entity controlled by Amtrak could not have foreseen and prevented such violation; and (3) the number of days of noncompliance that were caused by such circumstances. If Amtrak fails to sustain its burden of proof under this Paragraph, stipulated penalties shall be paid for each day of noncompliance beginning with the first day of such noncompliance including interest at the rate provided for in 28 U.S.C. § 1961 from the date that the stipulated penalties were originally due. The time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by mutual agreement of the Parties for a period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

68. Compliance with any requirement of this Consent Decree by itself shall not constitute compliance with any other requirement. Amtrak must make an individual showing of proof regarding each requirement for which an extension is sought.

XII. DISPUTE RESOLUTION

69. Any dispute to which this Section applies shall be, in the first instance, the subject of informal negotiations between Amtrak and the United States to attempt to resolve such dispute. Such

period of informal negotiations shall not extend beyond twenty (20) days of the date when notice of a dispute is given by Amtrak, unless agreed to in writing by the United States. The parties may agree to mediation. After informal negotiations or mediation, if the United States and Amtrak are unable to agree upon the meaning or application of the requirements of this Decree, then the interpretation of the United States shall prevail unless Amtrak exercises its right to petition the Court in accordance with this Section. Amtrak may petition the Court within thirty (30) calendar days of the end of the informal negotiation or mediation period for resolution of the dispute. The petition shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) calendar days to respond to the petition. The pendency of any negotiations or petition under this Section shall not operate as a stay of any obligation of this Decree, except by consent.

XIII. AMTRAK REFORM AND ACCOUNTABILITY ACT

70. In the event of the implementation of either a restructuring plan as defined in section 205(d)(2) of the Amtrak Reform and Accountability Act of 1997, Pub. L. 105-134 (“restructuring plan”) or an action plan for the complete liquidation of Amtrak pursuant to the Amtrak Reform and Accountability Act of 1997, Pub. L. 105-134 (or similar legislation) (“liquidation plan”), and Amtrak believes that such implementation will delay or prevent the timely performance of an obligation under this Consent Decree notwithstanding Amtrak’s best efforts to avoid the delay, Amtrak shall notify EPA in accordance with the procedures specified in paragraph 64 of this Decree. If EPA agrees that a delay or anticipated delay is attributable to the implementation of such restructuring plan or liquidation plan notwithstanding Amtrak’s best efforts to avoid the delay, the parties shall stipulate in writing to an extension of time for the performance of the affected requirements of this Consent Decree, not to

exceed the amount of time lost due to the actual unavoidable delay resulting from such implementation. Stipulated penalties shall not be due for the number of days of noncompliance caused by such implementation.

71. If the parties are unable to agree whether Amtrak's failure to comply with a provision of this Consent Decree is attributable to the implementation of a restructuring plan or liquidation plan, or on the number of days of noncompliance that were caused by such implementation, or whether Amtrak's best efforts could avoid the delay, the matter shall be subject to Dispute Resolution. Amtrak shall notify EPA of its request to invoke dispute resolution within ten (10) days of receipt of written notice from EPA that it disagrees with Amtrak's position either (a) that a delay is attributable to such implementation, (b) as to the number of days of noncompliance caused by such implementation, or that Amtrak's best efforts could avoid the delay. Thereafter, the provisions of Section XII (Dispute Resolution) shall apply. If the Court then determines that the failure to comply was caused by the implementation of a restructuring plan or liquidation plan and that Amtrak could not have prevented such noncompliance notwithstanding Amtrak's best efforts to avoid the noncompliance, Amtrak shall be excused as to the failure to comply for the period of time the noncompliance continued due to such implementation.

72. In any such determination to be made by the Court pursuant to Paragraph 71, the procedural provisions of Paragraphs 67 and the provisions of Paragraph 68 of this Decree shall apply.

XIV. RIGHT OF ENTRY

73. EPA and its contractors, consultants, and attorneys shall have authority to enter any Amtrak facility, at all reasonable times, upon proper identification, except as provided in Paragraph 5 above with respect to the Culvert Project sites, for the purposes of monitoring the progress of activity required by this Consent Decree, verifying any data or information submitted to EPA under this Consent Decree, assessing Amtrak's compliance with this Consent Decree, taking samples, and taking splits of samples collected by Amtrak or its consultants. This requirement is in addition to, and not in limitation of, EPA's authority pursuant to the Act and any other provision of state or federal law.

XV. FORM OF NOTICE

74. (a) Submissions required by this Consent Decree to be made to the United States or an agency thereof shall be made in writing to the following respective addressees, unless written notice is given that another individual has been designated to receive the submissions:

As to the Department of Justice

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station
Washington, D.C. 20044-7611
DJ # 90-5-1-1-06798
Attn: Henry Friedman

As to the United States Attorney

George B. Henderson, II
Assistant United States Attorney
One Courthouse Way Suite 9200
Boston, Massachusetts 02210

Telephone: 617-748-3272
Telecopy: 617-748-3971

As to the EPA

Steven Couto
Water Technical Unit
Office of Enforcement
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 – Mail Code SEW
Boston, Massachusetts 02114-2023
Telephone: 617-918-1765
Telecopy: 617-918-1810

and

Edith A. Goldman
Regulatory Legal Unit
Office of Enforcement
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 – Mail Code SEL
Boston, Massachusetts 02114-2023
Telephone: 617-918-1866
Telecopy: 617-918-1809

Any facility specific submissions that are required to be made to EPA under Section VIII of this Decree shall be made to the EPA addressees listed above and also to the EPA Regional Office for the region in which the relevant facility is located. The latter submission shall be to the attention of the regional Audit Policy contact.

(b) Notice to Amtrak under this Consent Decree shall be made in writing to the following respective addressees, unless written notice is given that another individual has been designated to receive the submissions:

Roy Deitchman

Assistant Vice President, Environmental
National Railroad Passenger Corporation
60 Massachusetts Ave., N.E., Three West
Washington DC 20002
Telephone: (202) 906-3278
Telecopy: (202) 906-3500

and

Michael R. Stern, Esq.
Associate General Counsel
National Railroad Passenger Corporation
Union Station
50 Union Avenue
New Haven CT 06519
Telephone: (203) 773-6138
Telecopy: (203) 773-6092

XVI. CERTIFICATION

75. All written notices, reports or any other submissions required by this Consent Decree shall contain the following certification by a senior management official of Amtrak:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

XVII. NOT A PERMIT

76. This Consent Decree is neither a permit nor a modification of existing permits under any federal, state, or local law and in no way relieves Amtrak of its responsibilities to comply with all applicable federal, state, and local laws and regulations, nor shall it be construed to constitute EPA

approval of any equipment or technology installed by Amtrak in connection with the SEP under the terms of this Consent Decree.

XVIII. NON-WAIVER PROVISIONS

77. This Consent Decree does not limit any rights or remedies available to the United States for any violation by Amtrak of the Act and associated regulations or permit conditions, except that this Consent Decree fully satisfies the civil judicial claims as alleged in the Complaint in this action through the date of lodging of this Consent Decree. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations. This Consent Decree does not limit the standing of any person under Section 505 of the CWA to sue for any future violation of the CWA not addressed by this Decree. Plaintiff expressly reserves all rights and remedies, legal and equitable, available to it for all violations of the Act and other applicable laws where such violations are not alleged in the Complaint, and reserves all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree. Nothing herein shall be construed to limit the power of the United States, consistent with its respective authority, to undertake any action against any person, in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment. Amtrak reserves any defenses or claims which it may have with respect to such federal rights and remedies.

XIX. COSTS

78. Each party shall bear its own costs and attorney's fees in this action. Amtrak shall be responsible for any and all expenses of any nature whatsoever incurred by the United States in

collecting any outstanding penalties due under this Consent Decree and in enforcing the requirements of this Consent Decree.

XX. RETENTION OF JURISDICTION

79. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XXI. MODIFICATION

80. Any material modification of this Consent Decree shall be by agreement of the parties and in writing and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be by agreement of the parties and in writing and shall not take effect until filed with the Court.

XXII. TERMINATION

81. Either party may move the Court to terminate this Consent Decree when all penalties that Amtrak is obligated to pay under Paragraphs 5 and Section X of this Consent Decree have been paid in full and when Amtrak has completed all of the requirements set out in this Consent Decree.

XXIII. FINAL JUDGMENT

82. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

XXIV. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

83. Amtrak shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Amtrak agrees to accept service by mail and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XXV. PUBLIC COMMENT

84. Amtrak consents to the entry of this Consent Decree without further notice. The United States consents to the entry of this Consent Decree subject to publication of notice of the decree in the Federal Register, pursuant to 28 C.F.R. § 50.7, and an opportunity to consider comments thereon.

85. If, for any reason, this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

Judgment is hereby entered in accordance with the foregoing Consent Decree this _____ day of _____ 2001.

UNITED STATES DISTRICT JUDGE